

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

Michael D. Hendrickson,)	Civil Action No. <u>22-cv-5063</u>
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	
Rapid City, Pierre & Eastern)	
Railroad, Inc.,)	
)	
Defendant.)	

COMES NOW, the plaintiff, Michael D. Hendrickson, and for his first claim and cause of action against Defendant, Rapid City, Pierre & Eastern Railroad, Inc., a Delaware corporation, states and alleges as follows:

Preliminary Statement

1. This is an action to recover damages for personal injuries Plaintiff suffered during the course and scope of his employment on August 02, 2019, while working as a conductor for Defendant. Plaintiff brings this action under the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51-60.

Parties

2. That at the time of the incident, Plaintiff was a resident and citizen of Rapid City, South Dakota, and was employed by Defendant as an engineer engaged in interstate commerce.

3. That at all times relevant herein, Defendant was a corporation duly organized and existing under the law of the State of Delaware, and duly licensed and empowered to operate a system of railroads as a common carrier of freight for hire in and through the State of South Dakota and was engaged as a common carrier in interstate commerce.

Jurisdiction & Venue

4. That this Court has subject-matter jurisdiction over Plaintiff's FELA claims pursuant to 28 U.S.C. § 1331 (federal question).

5. That this Court has personal jurisdiction over Defendant since the incident giving rise to Plaintiff's FELA claims occurred within the State of South Dakota.

6. That venue to bring Plaintiff's FELA claims in this Court is proper pursuant to 45 U.S.C. § 56, which allows bringing FELA claims in the district where the cause of action arose or in the district where the defendant is doing business at the time the action is commenced.

7. That this action brought under the FELA is timely commenced pursuant to 45 U.S.C. § 56.

Facts

8. That in the early hours on August 2, 2019, Plaintiff was in the course and scope of his employment working as a conductor on Defendant's train on its tracks near New Underwood, South Dakota. Plaintiff was part of a two-person crew, and he and Kenneth Petersen, an engineer, were assigned the job to operate train eastbound out of Rapid City. Previous there was heavy rainfall of about 4.5 inches near New Underwood. The rainwater accumulated in the track bed near Sharpe Road, and then washed out the materials supporting the tracks as well as the ties, leaving only the rail. When the train Plaintiff occupied traveled over the washed-out section of track, the train derailed, including the lead locomotive on which the train crew occupied. As a result of the derailment, the locomotive rolled onto its side, and Plaintiff was thrown to the right side of the locomotive that was filling with mud. Also as a result of the derailment, an electrical panel in the locomotive cab emitted smoke and the smell of burning wires. As a result of the derailment, Plaintiff was caused to suffer severe and permanent injuries and be otherwise damaged.

**Count One (negligence per se/strict liability for violations
of Federal Railroad Administration Regulations)**

Plaintiff realleges paragraphs 1 through 8 as set forth at length and in detail herein.

9. Plaintiff's injuries and resulting damages were caused in whole or in part by Defendant's violation of Federal Railroad Administration (FRA) regulations contained in Title 49, Part 213, including, but not limited to 49 C.F.R. § 213.33, 49 C.F.R. § 213.103, and 49 C.F.R. § 213.239, when Defendant failed to comply with Track Safety Standards setting out requirements and maintenance of tracks and roadbeds.

10. That as a result, Plaintiff was injured, suffered pain in the past and will suffer pain in the future; has incurred expenses for medical treatment, and will incur further like expenses in the future; has suffered loss of earnings and loss of future earning capacity; has suffered loss of his enjoyment of life; and has suffered permanent injury and disability, all to his injury and damage.

Count Two (negligence and breach of duty under the FELA)

Plaintiff realleges paragraphs 1 through 10 as set forth at length and in detail herein.

11. That the injures and damages sustained by Plaintiff were caused, in whole or in part, by reason of Defendant's breach of duty and violation of the FELA, 45 U.S.C. § 51, when it:

- a. Failed to provide a reasonably safe place to work;
- b. Failed to properly inspect, maintain, and repair its tracks, roadbeds, and systems providing drainage;
- c. Failed to adopt and enforce safe rules and methods;
- d. Failed to warn about unsafe conditions; and
- e. Committed other acts of negligence as shown in discovery of this case.

12. That as a result, Plaintiff was injured, suffered pain in the past and will suffer pain in the future; has incurred expenses for medical treatment, and will incur further like expenses in

the future; has suffered loss of earnings and loss of future earning capacity; has suffered loss of his enjoyment of life; and has suffered permanent injury and disability, all to his injury and damage.

WHEREFORE, Plaintiff Michael D. Hendrickson prays judgment against the above-named Defendant, Rapid City, Pierre & Eastern Railroad, Inc., a Delaware corporation, for recovery of reasonable damages in an amount sufficient to fully compensate Plaintiff for the losses and damages, together with his costs and disbursements and reasonable attorneys' fees herein.

PLAINTIFF DEMANDS TRIAL BY A JURY.

Dated: July 20, 2022

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